

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER**

IN THE MATTER OF:

**ADAM TIMMERMAN dba AT
LIVESTOCK ENT SOUTH**

Facility #62498
Section 35, Pilot Township
Cherokee County, Iowa
Cherokee, Iowa

ADMINISTRATIVE ORDER
NO. 2014-AFO-**21**

TO: Adam Timmerman
1635 585th Street
Cherokee, Iowa 51012

I. SUMMARY

This Administrative Order (Order) requires you to comply with the provisions in Section V of this Order, subject to your appeal rights stated in this Order.

Questions regarding this Order should be directed to:

Relating to technical requirements:

Cindy Martens, Field Office 3
Department of Natural Resources
1900 N. Grand – Gateway North, Suite E17
Spencer, Iowa 51031-2200
Phone: 712/262-4177

Relating to appeal rights:

Kelli Book, Attorney
Department of Natural Resources
7900 Hickman Road, Suite 1
Windsor Heights, Iowa 50324
Phone: 515/725-9572

Appeal, if any, addressed to:

Director, Department of Natural Resources
Henry A. Wallace Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

Penalty of payment to:

Department of Natural Resources
Henry A. Wallace Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

II. JURISDICTION

This Order is issued pursuant to the provisions of Iowa Code section 455B.175(1), which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code Chapter 455B, Division III, Part 1 or Iowa Code Chapter 459 and the rules adopted or permits issued pursuant thereto; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) Chapter 10, which authorize the Director to assess administrative penalties.

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III. STATEMENT OF FACTS

1. Adam Timmerman owns and operates AT Livestock Ent South (AT Livestock South), a 960 animal unit confinement facility. The facility has two buildings each housing 1,200 head of wean to finish swine for a total of 2,400 head. Both buildings utilize deep under building pits for manure storage. The facility is located at 1725 600th Street, Cherokee, Iowa (SE of SW $\frac{1}{4}$ of Section 35, Pilot Township, Cherokee County, Iowa). The annual manure management plan (MMP) update deadline was established as May 1 of each calendar year for AT Livestock South.

2. On May 12, 2014, DNR Field Office 3 issued a Notice of Violation letter to Mr. Timmerman for failing to submit the MMP update and fees by May 1, 2014. The letter stated the MMP update and fee must be submitted by June 1, 2014 to avoid a compliance action with a monetary penalty.

3. On June 9, 2014, DNR Field Office 3 attempted to contact Mr. Timmerman via telephone. The voice mail on the telephone said to either text or email Mr. Timmerman. On June 9, 2014, the Notice of Violation letter was emailed to Mr. Timmerman regarding the late MMP update and fee.

4. On June 20, 2014, DNR Field Office 3 issued a Notice of Referral to Mr. Timmerman for failing to submit a timely MMP update and fee. The letter informed Mr. Timmerman that the matter was being referred for further enforcement.

5. On August 4, 2014, DNR Field Office received the MMP update and fee for AT Livestock South. On August 5, 2014, Mr. Timmerman sent an email to DNR Field Office 3 stating he had just read the June 9, 2014 email and that he did submit the MMP update and fee. He also stated that there had been problems with his mail because of a road construction project.

6. Mr. Timmerman has failed to timely submit the MMP update and fee in the past for AT Livestock South. On May 12, 2010, DNR issued a Notice of Violation letter to Mr. Timmerman for failing to submit the MMP update and fee for 2010 by May 1, 2010. On May 11, 2011, DNR issued a Notice of Violation letter to Mr. Timmerman for failing to submit the MMP update and fee for 2011 by May 1, 2011. Additionally, Mr. Timmerman owns and operates another animal feeding operation facility (AT Livestock Ent North). He has been issued four Notice of Violation letters (2006, 2008, 2010, and 2013) and an administrative order in 2011 for failing to submit the MMP update and fee by the due date for the AT Livestock Ent North facility.

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IV. CONCLUSIONS OF LAW

1. Iowa Code section 459.12(13) and 567 IAC 65.16(3)“b” and “c” require an owner of a confinement feeding operation who is required to submit a MMP to submit a complete updated MMP and a compliance fee on an annual basis to the DNR. The 2014 MMP update and fee for AT Livestock South were due May 1, 2014. The MMP update and fee were not submitted to the DNR until August 4, 2014. The above-mentioned facts indicate violations of this provision.

V. ORDER

THEREFORE, the DNR orders Mr. Timmerman to do the following:

1. Timely submit future MMP updates and compliance fees; and
2. Pay an administrative penalty in the amount of \$4,250.00 within 60 days of receipt of this Order, subject to appeal rights stated in Section VII of this Order.

VI. PENALTY

1. Iowa Code section 455B.191 authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for each of the water quality violations involved in this matter.

2. Iowa Code section 455B.109 authorizes the Environmental Protection Commission (Commission) to establish by rule a schedule of civil penalties up to \$10,000.00, which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC Chapter 10. Pursuant to this chapter, the DNR has determined that the most effective and efficient means of addressing the above-cited violation is the issuance of this Order with an administrative penalty of \$4,250.00. The administrative penalty is determined as follows:

Economic Benefit – Mr. Timmerman’s failure to timely submit a complete MMP and compliance fee allowed Mr. Timmerman to save time and money. Mr. Timmerman gained an economic benefit from the delay in the submittal. It is estimated that Mr. Timmerman has gained an economic benefit of at least \$50.00 and that amount is assessed for this factor.

Gravity – One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the DNR has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving

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the matter. The MMP update is a crucial aspect of the DNR's animal feeding operation program. The MMP update ensures that an animal feeding operation has adequate production land available so that the manure can be properly applied to cropland at an agronomic rate in order to prevent over application of manure. The AT Livestock South facility has a capacity of 960 animal units and environmental harm is likely to occur if the manure is not applied properly. Additionally, DNR Field Office 3 has expended labor and expenses in informing Mr. Timmerman of the requirements. Therefore, \$1,700.00 is assessed for this factor.

Culpability – Mr. Timmerman has a duty to remain knowledgeable of DNR's requirements and to be alert to the probability that his conduct is subject to DNR's rules. Mr. Timmerman has two facilities and has repeatedly submitted the MMP update and fee for the facilities late. Mr. Timmerman has been informed of the regulations through the Notice of Violation letters and administrative order on several past occasions. Therefore, \$2,500.00 is assessed for this factor.

VII. APPEAL RIGHTS

Pursuant to Iowa Code section 455B.175, and 567 IAC chapter 7, a written Notice of Appeal to the Commission may be filed within 30 days of receipt of this Order. The Notice of Appeal should be filed with the Director of the DNR and must identify the specific portion or portions of this Order being appealed and include a short and plain statement of the reasons for appeal. A contested case hearing will then be commenced pursuant to Iowa Code chapter 17A and 561 IAC Chapter 7.

VIII. NONCOMPLIANCE

Compliance with Section V of this Order constitutes full satisfaction of all requirements pertaining to the violations described in this Order. Failure to comply with this Order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191.



CHUCK GIPP, DIRECTOR
Iowa Department of Natural Resources

Dated this 2nd day of
October, 2014.

Facility #62498; Kelli Book, DNR Field Office 3, EPA, VIII.C.2